IN THE

Supreme Court of the United States

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OCTOBER TERM, 1978
NO. 78-630

STATE OF WASHINGTON, et al
Appellants,
v.
CONFEDERATED TRIBES OF THE COLVILLE
INDIAN RESERVATION, et al
Appellees.

STATE OF WASHINGTON,
Appellant,
v.
UNITED STATES OF AMERICA AND CONFEDERATED
BANDS AND TRIBES OF THE YAKIMA
INDIAN NATION,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF WASHINGTON

BRIEF OF AMICI CURIAE
QUINALT INDIAN NATION, COEUR D' ALENE TRIBE;
KALISPEL TRIBE; LOWER ELWA TRIBE, MUCKLESHOOT
INDIAN TRIBE; PORT GAMBLE KLALLAM TRIBE; PUYALLUP
INDIAN TRIBE; QUILEUTE INDIAN TRIBE; SHOALWATER
BAY INDIAN TRIBE; SKOKOMISH INDIAN TRIBE, SQUAXIN
ISLAND INDIAN TRIBE; SUQUAMISH INDIAN TRIBE;
SWINOMISH TRIBAL COMMUNITY

IN SUPPORT OF APPELLEES

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CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION, et al
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STATE OF WASHINGTON,
Appellant,
v.
UNITED STATES OF AMERICA AND CONFEDERATED BANDS AND TRIBES OF THE YAKIMA INDIAN NATION,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON

BRIEF OF AMICI CURIAE QUINALT INDIAN NATION, COEUR D' ALENE TRIBE; KALISPEL TRIBE; LOWER ELWA TRIBE; MUCKLESHOOT INDIAN TRIBE; PORT GAMBLE KLALLAM TRIBE; PUYALLUP INDIAN TRIBE; QUILEUTE INDIAN TRIBE; SHOALWATER BAY INDIAN TRIBE; SKOKOMISH INDIAN TRIBE; SQUAXIN ISLAND INDIAN TRIBE; SUQUAMISH INDIAN TRIBE; SWINOMISH TRIBAL COMMUNITY

IN SUPPORT OF APPELLEES

INTEREST OF THE AMICI

The amici have received the consent of all parties to this appeal for the filing of this brief.

The amici are Native American Tribes and Nations with reservations in the Pacific Northwest. Each of the amici raises tax revenue through the regulation and taxation of on-reservation tobacco sales to Indians and non-Indians. In addition, the Lower Elwa, Muckleshoot, Quileute, Quinault, Port Gamble and Squaxin Island Tribes, through the operation of exclusive tribal enterprises, realize all net proceeds from the sale of tobacco products. Proceeds realized by these exclusive tribal enterprises are retained by the tribal governments. Tax revenue and net proceeds accordingly derived from the regulation of on-reservation tobacco sales provide the amici with critically needed funds for the support of their tribal governments and services provided by the tribal governments. The amici's legitimate interest in deriving revenue for the support of tribal government from the taxation of reservation based

tobacco sales would, as the appellants admit, be frustrated if the state could regulate the same transactions. Imposition of the state tax would likewise frustrate the policy of the United States which is to encourage the development of tribal governments so as to increase their capacity to provide for the political and economic dignity of Indians. See, e.g., Indian Self-Determination and Education Act, 25 U.S.C. §450 et seq.; Indian Financing Act, 25 U.S.C. §1451 et seq. Decision of this case will affect the ability of the amici to support effective tribal governments and to provide programs that meet the human needs of reservation residents.

SUMMARY OF ARGUMENT

Indian reservations are homelands for Indians. To govern these reservations effectively, Indian tribes must have revenue.

Revenue from the regulation and taxation of on-reservation tobacco sales has provided the amici with critically needed revenue. Revenue from tobacco sales has been used by tribal governments in a variety of important ways.

The power to regulate trade with the Indian Tribes is committed to Congress by the Constitution. The appellants' effort to subject Indian tribes to the state's regulatory and taxing scheme violates the sovereignty of the Indian tribes. The power to regulate commerce with the Indian tribes should be left to Congress, not the states.

ARGUMENT

I.
The Purpose of Indian Reservations

The setting aside of Indian reservations as homelands for the Indian tribes is the keystone of United States Indian law. These reserves were intended to protect the Indian tribes from encroaching non-Indian society. To this end, the treaties negotiated with the Indian tribes of the Pacific Northwest provided that the reservations were set aside for the exclusive use of the Indian tribes. For example, Article II of the treaty of Medicine Creek, I Kappler, Indian Affairs and Treaties 918-19 (2d ed. 1904), assured the tribes joining that treaty that their reservations would be:

> for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the superintendent or agent . . . .

Article II of the treaty between the Quinault and Quileute Indians and the United States contains nearly identical language. 12 Stat. 971-74. See also Article II of the Treaty of Point Elliott, 12 Stat. 927. In Williams v. Lee, 358 U.S. 217 (1959), this Court interpreted the treaty with the Navajos which "set apart" as their "permanent home" a portion of their ancestral lands. "Implicit in these treaty terms, as it was in the treaties with the Cherokees involved in Worcester v. Georgia, was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed." Id. at 221-11.

The establishment of reservations was intended to protect and enhance the political and economic dignity of Indians. Chief Justice Marshall recognized this stating that the Indian nations were "distinct political communities, having territorial boundaries, within which their

authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged but guarantied by the United States." Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 557 (1832), quoted in McClanahan v. Arizona Tax Commission, 411 U.S. 164, 168 (1973). That tribal governments retain today the power to provide for the economic welfare of reservation residents was reaffirmed in Williams v. Lee.

In order to support these tribal governments, and the programs they provide, it is essential that tribal governments raise revenue.[1] Traditionally, governments raise needed revenue by taxation. That the power to raise revenue is essential to the vitality of government was recognized by The Federalist, No. 30.

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[1] Like states, the tribes rely to some extent on federal grants and contracts for revenue. Federal funds are insufficient, however, to provide for all, or even most, of the revenue needed by tribal and state governments. Too great a dependence on federal funding would, in any event, have a debilitating effect on the independence and self-government of both tribal and state governments. Tribal and state governments, being closer to the communities they govern, are better equipped to assess and satisfy the public wants.

> Money is, with propriety, considered as the vital principle of the body politic; as that which sustains its life and motion, and enables it to perform its most essential functions. A complete power, therefore, to procure a regular and adequate supply of it, as far as the resources of the community permit, may be regarded as an indispensable ingredient in every constitution. From a deficiency in this particular, one of two evils must ensue: either the people must be subjected to a continual plunder, as a substitute for a more eligible mode of supplying the public wants, or the government must sink into a fatal atrophy, and, in a short course of time, perish.

II.
Utilization of Tobacco Revenue By Tribal Governments

The amici tribes determined that they could generate critically needed reveune by regulating and taxing the on-reservation sale of tobacco products to Indians and non-Indians. Seven of the amici have raised revenue in this manner since at least 1974.[2] While several of the amici also raise some revenue through the regulation and taxation of fishing and other business activities

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[2] Coeur d' Alene, Lower Elwa, Muckleshoot, Quileute, Puyallup, Suquamish, and Swinomish.

taking place within their reservations,[3] some of the other amici reservations are so small and underdeveloped that the regulation and taxation of on-reservation tobacco sales presently is the only practical way of raising revenue for the support of tribal governmental programs.

Most of the amici tribes have reservations in rural and semi-rural areas. Reservation communities are generally small, scattered and isolated. Revenue from the regulation and taxation of on-reservation tobacco sales has enabled the tribes to provide these communities with government services. Comparable state services, even if available and otherwise adequate to meet the particular needs of reservation residents, are usually provided at inconvenient locations so far distant from reservation communities at to be practically unavailable.

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3 E.g., Quinault Tribal Code (Q.T.C.) §§51.03.01-51.03.03 (fishing permits); Q.T.C. §§51.07.01-51.07.05 (clam digging permits); Q.T.C. §§40.01; 40.04-40.07 (business license and tax). The regulations apply to Indians and non-Indians.

In too many cases, therefore, the tribes are the only governments both willing and able to provide services to reservation residents.[4]

Some examples of how the amici utilize their tobacco revenue emphasize these points.[5]

Law Enforcement: The protection of society through the provision of police services is one of the most fundamental of all governmental powers. The prevention of crime and the apprehension of criminal suspects is a high governmental priority in any society which values the rule of law.

The amici's allocation of tobacco revenue emphasizes their concern for law enforcement. In

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4 The Quinault Indian Nation, for example, provides the following services, among others, to both Indian and non-Indian reservation residents: police protection; fire protection; emergency medical transport; lake patrol; Head Start; library; youth summer camp; roads; sanitation; social services; emergency health care; recreational facilities; alcohol counseling; senior citizen lunch program; youth counseling; judicial services; day care; and building inspection.

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5 Appendix A to this brief is a study of the amici's tobacco ordinances. This study is the source of most of the data which follows.

1977 and 1978, the Puyallup Tribe spent $91,800 of its tobacco revenue on tribal law enforcement. Law enforcement expenditures of $14,920 were made by the Swinomish Tribe in 1977 and $16,240 in 1978 for upkeep on patrol cars, gasoline purchases, radio equipment, uniforms and insurance for the officers. The Muckleshoot Tribe spent $10,621 in 1977 on law enforcement for salaries, to purchase gasoline for patrol cars and boats, and for officers' insurance and supplies. Also in 1977, the Muckleshoot Tribal police department was able to increase its coverage from 16 hours to 24 hours per day. Expenditures for law enforcement were also made in 1977 and 1978 by the Shoalwater and Suquamish Tribes. Cases investigated by tribal police include vehicle and other thefts, assaults, alcohol and related crimes, domestic disputes, juvenile problems and suicide prevention. In addition, because tribal police are located on-reservation, they are often the first police agency to arrive at accidents on state highways located on the reservations. Tribal law enforcement efforts therefore provide valuable asistance to state law enforcement

agencies in the rural and semi-rural areas where most Indian reservations are located.

Operating Expenses of Tribal Council (Legislature): Tribal Councils are the legislative bodies governing Indian tribes. They play a central role in the political life of Indian tribes by enacting laws which establish the policies that guide tribal administrators. Members of tribal councils are consulted by Congress and members of the Executive Branch of the United States government on matters affecting Indian tribes. The Muckleshoot Tribal Council utilized $18,277 of tobacco revenue to cover the costs of testifying at Congressional hearing in Washington, D.C., to register and attend regional policy meetings, and to conduct Business Committee (Tribal Council) meetings.

Tribal Courts: As this Court recently observed in Santa Clara Pueblo v. Martinez, 436 U.S. 49, 65 (1978), tribal courts "have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both

Indians and non-Indians." Tribal courts also expend substantial time in handling criminal cases. In order to provide for the enforcement of its civil and criminal laws, a sovereign must have a court system. The Muckleshoot, Skokomish and Suquamish Tribes have supported their tribal court systems with tobacco revenue.

Tribal Administration: The day-by day-affairs of tribal governments, like their federal and state counterparts, are carried-out by their executive officers or administrators. Salaries of administrators supervising tribal programs were funded with tobacco revenue by the Port Gamble Klallam, Puyallup, Skokomish and Swinomish Tribes. The Muckleshoot and Puyallup Tribes also used tobacco revenue to pay legal expenses.

In addition to using tobacco revenue to pay the salaries of tribal administrators, tobacco revenue was used by several of the amici to cover operating and overhead expenses in various tribal programs. The Lower Elwha, Muckleshoot, Port Gample Klallam, Puyallup, Shoalwater, Skokomish, Squaxin Island, and Suquamish Tribes also relied on

tobacco revenue to cover temporary cash flow problems in tribal budgets.

Education: The education of children is one of the most important services any government can provide. In state run public schools, however, Indian children often fall 2-to-3 years behind their non-Indian counterparts in achievement levels. I American Indian Policy Review Commission, Final Report 402 (1977). All revenue derived by the Coeur d' Alene Tribe from its regulation and taxation of tobacco sales is used to help operate a tribal school which began operation in 1974. Approximately one-third of the school's operating expenses are paid for out of revenue derived from the Tribe's regulation and taxation of tobacco sales. Fifty-five children enrolled in the pre-school program and 88 - 100 children are enrolled in grades K through 8. A majority of the school's teachers and its principal are Indian. The school is oriented to the Couer d' Alene culture.

The Muckleshoot Tribe spends part of its revenue to support its Johnson - O'Malley Program which places Indian teachers' aides and counselors

in public schools used by tribal children. The Tribe also provides tribal children with books, school supplies and gym clothes. Tax revenue has been used by the Muckleshoot Tribe to support its Title IV Adult Education Program and to support other tribal programs which were underfunded for indirect costs by federal aid programs.

The Puyallup Tribe supports its Tribal School District with tobacco tax revenue. There are three schools in the system with 270 - 275 children in the Head Start Program through grade 12. In addition, 50 sutdents are on the waiting list for the tribal high school and 60 are on the waiting list for the pre-school program. The tribal education program's success is attributed in part to its orientation to the tribal culture and heritage, an orientation not found in nearby public schools.

One-half of all funds derived by the Shoalwater Tribe from its tobacco sales tax go to the Tribal Education Foundation which is distributed to needy students in the form of scholarships.

The Skokomish Tribe deposits its tax revenue into a general fund which is used to pay the

salaries of several tribal administrators, including those supervising a learning center for 30-40 students and an Indian language program serving 60-70 persons.

Fisheries Management: From time immemorial, members of the amici tribes have depended on fishing both for subsistence and as a basis of commerce. The right to take fish is protected by their treaties. The right to fish remains important today to the culture and economy of the amici tribes. Several of the amici have spent tobacco revenue on fisheries management and enhancement: Muckleshoot ($21,565); Puyallup ($66,700); Shoalwater ($600); Skokomish; Squaxin Island; and Swinomish ($7,680). In 1979 the Squaxin Island Tribe made loans to tribal fishermen who were unable to get loans from the Bureau of Indian Affairs. The Puyallup Tribe used some of its tobacco revenue in 1977 as start-up costs for a tribal fish cannery which employes 30 tribal and Japanese workers.

Community Services: The impoverished nature of the amici's reservations creates special demands

for community services. Funerals were provided for the deceased with tobacco revenue by the Muckleshoot, Shoalwater and Skokomish Tribes. Land for H.U.D. housing for tribal members was purchased by the Squaxin Island Tribe in 1977 with $31,839 in tobacco revenue. Housing needs were also provided for by the Muckleshoot Tribe with $11,879 in tobacco revenue. Overhead and administrative costs for the operation of a tribal health clinic serving 75-to-125 people per week were financed with Muckleshoot Tribal tobacco revenue. Other community services provided by the amici with tobacco revenue included dinners for senior citizens, smoke-fire alarms for homes, garbage collection, construction and operation of recreational facilities, youth programs and cultural preservation.[6]

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[6] Some of the statutes adopted by the amici establish catagories for which the use of tobacco revenue is authorized. Section 209 of the Skokomish statute authorizes such use for enforcement of the tobacco statute; educational, recreational, and cultural activities; planning and administration of economic development for the reservation community; land use planning, administration of land use controls, and natural resource management and conservation efforts; water, sewer, solid waste disposal, and fire protection services; police protection and administration of justice; development and protection of archeological resources; and tribal administrative services necessary for implementation of any of the above programs and services.

Impact on State Financial Services: A number of services provided by the amici compliment comparable state efforts. Tribal fisheries programs, for example, by sound management of wild salmon and steelhead runs and the release of hatchery fish enhance the number of fish in Washington waters. Only a few of the fish the tribes release ever return to be harvested by the tribes. Many others are caught by non-treaty fishermen, thereby contributing to the commercial and recreational value of Washington waters. In other cases the amici provide services which would otherwise have to be provided by the states. The Coeur d' Alene and Puyallup Tribal Schools underwrite educational expenses that would otherwise be borne by the states in the public schools.

III.
Congress Has The Power To Regulate Trade With The Indian Tribes, Not The States

The appellants in their brief argue that the State of Washington should be given plenary authority to regulate the Indian tribes in their own regulation and taxation of on-reservation tobacco sales to Indians and non-Indians. The power to regulate trade with the Indian tribes, however, is textually committed to Congress by Article I, section 8, clause 3 of the United States Constitution. The appellants ask for nothing less than a judicial amendment to the Constitution so as to empower the States, or at least Washington State, to regulate trade with the Indian tribes. What the appellants seek is the evil the Indian Commerce Clause was designed to avert.

As the records of the Constitional Convention show, the power to regulate commerce with the Indian Nations was reserved to Congress because the individual states, under the Articles of Confederation, had engaged in war and made treaties with Indian tribes, thereby threatening the political relations of the United States with powerful Indian

tribes. 1 M. Farrand, The Records of the Federal Convention of 1787, at 316, 326, 330 (1911); 2 M. Farrand, at 548. By reserving to the Congress the power to regulate commerce "with" both "foriegn Nations" and "Indian Tribes," the Constitution provided Congress with plenary power to control those matters affecting the political relations of the United States in its affairs with soveriegn governments which owed no allegiance to the individual states.

As domestic, dependent nations, the amici owe no political loyalty to the seperate states. The amici's political obligations run to the United States. As was true in years past, there is today considerable friction between the tribes and the states. The Constitution, however, vests in the Congress, not the seperate states, political power to regulate trade with the Indian tribes. The appellants, nevertheless, ask this Court to hold that the states may regulate trade with the Indian tribes. Because that power is Constitutionally committed to the considered judgment of Congress, this Court should reject the appellant's argument.

In order to conserve the Court's time, the amici refrain from making argument on the other issues raised on this appeal. Those issues are treated fully in the respondents' briefs.

Respectfully submitted,

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APPENDIX A

A STUDY OF TRIBAL TAXATION AND SALES OF TOBACCO PRODUCTS ON 13 RESERVATIONS IN WASHINGTON AND IDAHO

BY

Toni Sheldon
Tim Sheldon

May 4, 1979

INTRODUCTION

This is a study done by Toni and Tim Sheldon gathering factual information concerning tobacco taxation and sales on the reservations of the amici in Washington and Idaho.[1] Each of these tribes regulates and taxes the sale of tobacco products. Tribal taxes imposed on tobacco products vary in amount and in method of assessment. A common assessment method is a tax rate per carton of cigarettes and is added to the retail price. Taxes levied in this manner range from $.25 per carton collected by the Coeur d'Alene Tribe to $.60 per carton collected by the Muckleshoot Tribe. All tribes, except Coeur d'Alene, that tax in this per carton manner also levy a tax as a percentage of wholesale or retail price on other tobacco products. These taxes vary from 5 percent of wholesale price at Skokomish to 10 percent of the retail price at Quinault.

Another method commonly used for taxing is to designate a percentage of the wholesale or retail price as the tax rate covering both cigarettes and other tobacco products. Tax rates range from 1 percent of retail sales price at Shoalwater Bay to 5.5 percent of retail sales price at Swinomish.

Tribes that operate tobacco shops on a tribal basis frequently collect all net profit of the shop as tax revenue. Taxing on this basis are Lower Elwha and Port Gamble Klallam. Other tribal shops, Suquamish and Squaxin Island, tax a set

rate per carton of cigarettes or a percentage of retail price in addition to all net profit.

Tobacco sales on the reservations take place in tribally owned outlets as well as tribally licensed outlets. On one reservation, Quinault, individuals operate contrary to the tribal ordinance limiting sales to tribal outlets. Tribal Court action to close these shops has begun.

The tribes regulate sales of tobacco products by means of tribal tobacco ordinances. In addition to taxing these ordinances frequently require annual license fees from operators of individual shops and require that a Federal Indian Trader's License be obtained. Many ordinances prohibit sales to persons under 18 years of age, authorize tribal police to enforce the ordinance and set penalties for violators. Most ordinances require individually licensed operators to be enrolled members of the tribe.

In addition to tax revenue for funding tribal programs, tobacco sales create much needed jobs on the reservations. Western Washington's 21 recognized tribes were plagued by a 48.5-percent overall unemployment rate in 1978 according to BIA statistics.[2] Tribal members often receive on-the-job training as sales clerks in tobacco shops. This training is from their peers and many members would be reluctant to attend an off-reservation training program.

The majority of tobacco outlet jobs are for semi-skilled people. This fills a need as most reservation residents

are unskilled or semi-skilled. Many tribal members are engaged in seasonal fishing and logging occupations and tribal tobacco outlet jobs held by their spouses are often the only family income in slack periods. Obligations such as house and car payments and food purchases must be maintained year-round.

In addition to semi-skilled sales clerks, watchmen and security positions, tobacco outlets provide some bookkeeping and managerial positions. The majority of these positions are filled by tribal members. Tobacco outlets have provided jobs for a number of reservation residents who were unemployed or receiving State public assistance.

Most reservations are located in rural areas and essential goods and services are often provided by the tobacco outlets. Many tobacco outlets sell groceries and gasoline, cash checks, display community notices and job openings and provide an outlet for locally made handicrafts and apparel. It is often the only store on the reservation and frequently the only non-subsidized tribal enterprise.

A very important aspect of tribal tax revenue is its unencumbered nature. For tribes with limited natural resources, tax revenues are often the only unencumbered funds they possess. These funds pay for essentials not budgeted in federal grants and contracts. The tax funds are not subject to burdensome federal reporting and are available without application, approval and a long waiting process. Tribal tobacco taxes often pay for funerals and cultural activities unique to

tribal communities where funding is unavailable for these activities through any conventional funding source.

Many tribes receive federal funds on a cost reimbursable basis through grants and contracts. Tobacco tax revenue will often be used to fund a needed program while the tribe applies for reimbursment. An example is BIA fisheries enforcement funds. While federal funds should be available when the fiscal year begins October 1 and the fishing season is underway, tribes will seldom receive any funds before the following January. Enforcement activities must be carried out and frequently tobacco tax dollars are used to finance these programs in the interim. Tribes would have to borrow funds, which is very difficult, or simply do without many needed programs if tobacco tax revenues were not available.

It should be pointed out that tobacco tax revenue is raised locally and in real dollars is much more effective than federal dollars that must be administered through many layers where often 20 to 30 percent is lost to administration.

The vast majority of funds available to the tribes studied originate from public funds--federal grants and contracts and revenue sharing funds. These funds are usually not predictable and revenue cannot always be anticipated in either amount or timeliness. Professor Russell Barsch states:

> Since tribes are small their public budgeting process tends to be 'lumpy' that is, aggregate expenditures differ greatly from year to year. One year a multi-million dollar community hall is built, then for two years

> no capital additions are made. Larger governmental units such as states are so diversified and manage so many different projects simultaneously that their aggregate revenue needs grow at a fairly even pace.[3]

In contrast to these "lumpy" funds, tribal tobacco taxes provide a steady income that is easy to project from year to year.

Tribal tobacco taxes frequently provide services in areas where the state or county refuse to extend service. Jurisdictional disputes and the isolated location of some reservations have resulted in inadequate state and county law enforcement on most reservations. Tobacco tax money is used by many tribes to fund their law enforcement programs. Officers' salaries, insurance, equipment purchases and funds for operation of tribal courts have been provided by tobacco tax funds. This tax revenue has also funded administrative positions managing tribal law enforcement grants and contracts. Fisheries enforcement by the state does not fulfill treaty mandates. Tribal tobacco tax revenue has been used to fund tribal fisheries patrols, administrative positions in fisheries enforcement and program overhead.

The following text, indexed by tribe, will demonstrate how tobacco sales constitute a large proportion of the tribal economy.

COEUR D'ALENE INDIAN TRIBE

The Couer d'Alene Tribe, in northern Idaho, operates a tobacco business similar to tribes in Washington State. Under an ordinance adopted by the tribal council in 1972, the Tribe acts as a tobacco distributor doing business with its licensed tobacco outlets and other tribes. The Tribe collects orders for tobacco products from the individual licensed outlets and places the orders with tobacco distributors. These distributors in turn deliver tobacco products directly to the licensed outlets for resale.

Any enrolled tribal member may apply to operate a licensed outlet. Each application is to be accompanied by a $50 application fee and is renewable annually. Applications are approved by the Tribal Council. Applicants who are less than full blooded Coeur d'Alene must obtain a Federal Indian Trader's License in addition to the tribal license.

No sales of tobacco products are allowed to anyone under the age of 18.

Any licensed outlet conducting another business in addition to tobacco sales is required to maintain separate books for the tobacco business.

Any tribe that wishes to utilize the Coeur d'Alene tribal distributorship must have a valid cigarette ordinance as approved by the Bureau of Indian Affairs.

Tribal tobacco taxes are applied to the sale of cigarettes. Currently the tax rate is $.25 per carton. The tobacco tax ordinance authorizes the tax to go as high as $.50 per carton.

All of the cigarette taxes collected by the Tribe have been used to operate a tribal school started in 1974. Cigarette taxes fund approximately one-third of the cost of the operation. The school is oriented to the Coeur d'Alene culture and all of the students and a majority of the teachers are Indian. The principal is also Indian.

Fifty-five Indian children are enrolled in the pre-school program and 88 to 100 are enrolled in kindergarten through 8th grade. The school includes classrooms, gym, swimming pool and recreational fields.

Tribal leaders state that without the contribution of the cigarette tax, the school would be a burden on the Tribe's limited assets.

Presently there are six tobacco outlets operating on the Reservation. Two additional shops were previously operated. There are three employees, all Coeur d'Alene, in the tribal tobacco shop. These three employees also operate a tribally owned service station. The other five outlets are operated as Coeur d'Alene family businesses. Taking into account the fact that the tribally operated outlet employs persons in the service station as well as tobacco sales, there are approximately 15 jobs directly connected with tobacco sales.

In 1978 the Coeur d'Alene Tribe's overall unemployment rate was 49 percent.[2] Of the 252 Coeur d'Alenes in the

potential labor force, 128 were employed. [2]The 15 jobs in tobacco sales represent 12 percent of the total Coeur d'Alenes employed. Of course, in the case of family-run business, the income and jobs are distributed widely and benefit a much larger number of people.

In 1972 one individual was prohibited from acting as a distributor of tobacco products in the name of the Tribe. This action prompted adoption of the first tribal tobacco ordinance.

Coeur d'Alene is unique in the tribes studied in that the State of Idaho recognizes its lack of jurisdiction over tribal cigarette sales. The State is not harrassing the Tribe and tribal officials have a working relationship with the Idaho Tax Commission.

KALISPEL INDIAN TRIBE

To generate revenue to fund needed tribal programs and services, the Kalispel Tribe adopted a tribal tobacco and liquor code in 1978. The Tribe authorized one tribally licensed shop to begin operations December 15, 1978. The Tribe set the tax rate at 5 percent of the wholesale price and 5 percent of gross sales on all items sold.

From December 15, 1978 to March 15, 1979 the Tribe collected $1,932 in tax revenue from tobacco sales. No liquor has been sold but an application for a federal tax stamp has been made. None of the collected tax revenue has been spent to

date. Some of the tax revenue was uncollected and is being used for capital improvements at the new shop.

The tobacco shop provides a display area for local arts and crafts and for Kalispel Metal Products, a tribal enterprise.

The tobacco shop has created four jobs, all for Indian people. Two of the four employed are Kalispel members and two are Spokane members. The two Kalispels employed represent 8.3 percent of the 24 employed Kalispel members in 1977.[2] (No BIA Labor Force statistics were available for 1978.) One employee of the tobacco shop was formerly receiving State unemployment benefits and another was employed by the CETA program. The Tribe hopes to realize enough income from tobacco and liquor taxes to improve police protection on the Reservation and to provide other services to the tribal community and to the county in general.

LOWER ELWHA

The Lower Elwha Tribe has operated one tribal tobacco shop since 1974. At present all tobacco sales are made through the tribal shop. The tribal ordinance authorizes individual members to apply for tobacco outlet licenses after the Tribe has become financially stable from the retailing of tobacco products. The tribal tobacco ordinance sets a tax of $.50 per carton for individual licensed sellers and all profit from the tribal shop is collected as tax revenue.

In 1977 profits from tribal tobacco shop sales were $53,880 and in 1978 profits amounted to $57,321. These profits were the only source of unencumbered revenue for the Tribe. Tax revenue was used to fund a Youth Coordinator position for supervision of 29 youths enrolled in a tribal Youth Conservation program. The tax revenue from the tobacco sales was the only source of revenue for this supervisory position. The youths supplied firewood for elders, operated the tribal green house, collected garbage, cut brush along roadways, cleaned spawning streams, and repaired cars for members not able to afford shop work. Tax revenue also funded a part time maintenance position for the Community Center Building. No other funds existed for this position. Travel expenses for Housing Authority members attending training workshops were paid by tobacco tax revenue as were travel expenses for other programs. Senior citizen dinners were supplied by the tax revenue. In addition to these expenditures tax revenue was used extensively in maintaining cash flow for all tribal programs.

The tribal tobacco outlet employs three clerks, all Lower Elwha members. The overall unemployment rate for the Tribe in 1978 was 54.2 percent.[2] The three jobs in tobacco sales represent 3.2 percent of the 92 members employed in 1978.[2]

Under Muckleshoot tribal tobacco and liquor ordinances the Tribe is the only authorized seller of these products. The tobacco shop has been operating since 1972 with the addition of liquor sales in 1978. The Tobacco and Liquor Enterprise is operated as an agency of the Tribal Government. At present, the tribal tax on sales of cigarettes is $.60 per carton and there is a similar excise tax on other tobacco products offered for sale in the amount of 11 percent of the wholesale price. Prior to April, 1978 all net profit of the Enterprise was considered as tax. An excise tax upon each retail sale of liquor, except beer or wine, in the amount of $.03 per fluid ounce is levied by the Tribe. An excise tax upon each retail sale of beer or wine is set at 5 percent of the retail price.

In addition to tobacco products and liquor, the tribal store sells gasoline, snack food, pop, local craft items and clothing. The store provides an outlet for the sale of locally made items and stimulates traditional handicrafts.

No tobacco sales are made to persons under 18 years of age and no liquor sales are made to persons under the age of 21.

By Muckleshoot ordinances, liquor and tobacco taxes shall be used for the benefit of the Reservation and tribal community. In appropriating from these tax revenues, the Tribal Council shall give priority to strengthening tribal government, including

the tribal court system, law enforcement system and the system for administering and enforcing the taxing ordinances. Other priority areas are fire protection, roads, water and sewage systems, health, education, other social services and land acquisition and development needs.

In 1977 the Tribe, under the authority of their tobacco ordinance, closed down an unauthorized tobacco products seller who intended to operate on the Reservation.

In 1977 total gross sales of the tobacco outlet amounted to $1,080,875. Tobacco products accounted for 95 percent, or $1,026,831 of the total gross sales. In 1977, $106,978 was realized in net profit. Under the ordinance in effect at that time, all net profit was tax revenue.

In 1977 the Tribe spent $32,497 in excess of all net profits from that year for a total of $139,475 spent on various governmental and social services. This additional $32,497 was attributable to net profits from tobacco sales in previous years. Of the total spent, $24,906 was used to provide educational services. Tribal educational programs were underfunded for indirect costs. The Tribe spent $14,319 in support of their Johnson-O'Malley Program. This program placed Indian teacher's aides and counselors in public schools used by tribal members and provided books, school supplies and gym clothes. An additional $10,587 was used for administrative support of the Tribe's Title IV Adult Education Program. This program provided tutors and classroom space for Muckleshoot

members seeking GED's.

In 1977 the Tribe spent $11,879 from tribal tax revenue for housing needs on the Reservation. Part of this amount or $8,879 was used to supplement the Bureau of Indian Affairs Housing Improvement Program. Needed repairs for substandard housing far exceeded the money available through this BIA program. Supplies, materials and carpentry tools were purchased. Four Muckleshoot members and one California Indian were employed by this program. An additional $3,000 was spent to supplement salaries of individuals working on a Farmer's Home Administration self-help housing project and a Housing and Urban Development project constructing forty units of low income housing on the Reservation.

Tax revenue of $3,164 was used for space costs, heat, lights, telephone and administration for the tribal health clinic. Between 75 and 125 persons including both Indians and non-Indians are served by the clinic each week. The clinic provides the services of two part-time medical doctors, a full-time licensed practical nurse, a full-time medical assistant, a full-time nurse practioner, a full-time environmental health official, a full-time health planner and two part-time social worker/counselors.

The tribal law enforcement program utilized $10,621 in tax revenue. These monies were used for salaries for enforcement officers, gasoline for patrol cars and boats, and officer's insurance and supplies.

Tax revenue of $21,565 was used to purchase building supplies, fish feed and medication for the tribal fish hatchery. Construction costs of recreational fields used by the Indian and non-Indian community were supplemented by $12,507 in tax revenue. Fifteen Muckleshoot people were employed in the construction project. The Tribal Council utilized $18,277 for travel expenses and registration fees for the nine members to attend regional policy meetings and to testify in Congressional hearings in Washington, D.C. Some of these monies were used to conduct Tribal Council meetings.

Tax revenue of $27,249 was spent for community services. These included senior citizen dinners, garbage collection on the Reservation, purchase of smoke alarms for Indian homes, cultural preservation events such as Skopabsh Days, recreational tournaments, community dances and use of the community center for funeral services. The Tribe spent $9,307 in tax revenue for legal expenses.

In 1978 gross sales from the Tribal Enterprise amounted to $1,283,795. Of this amount 95 percent or $1,219,605 is attributable to tobacco sales. For the months January through March, the tribal tax was the total net profit of the Enterprise. This amounted to $19,341.99. In April, 1978 the Tribe adopted a new taxing ordinance which set a tax rate of $.60 per carton of cigarettes and 11 percent of the wholesale price of other tobacco products sold. Another ordinance placed a tax on items other than tobacco sold in the Enterprise. The total tax collected on tobacco, gasoline, candy, crafts and sundries

was $64,815.89. Tobacco sales accounted for 95 percent of this, or $61,575. The total tax collected on tobacco products in 1978 was $80,916.99.

On October 15, 1978 the Tribal Enterprise began selling liquor. Total taxes collected from liquor sales through January 9, 1979 amounted to $9,573.02.

Tobacco and liquor tax money was combined with other tribal unencumbered income. Expenditures from this fund for tribal programs and costs not covered by federal grants amounted to $263,270 in 1978.

Many programs administered by the Muckleshoot Tribe in 1977 and 1978 were cost reimbursable. Total overhead for government contracts often exceeded the amount provided by the indirect cost rate and was late in arriving. Tobacco and liquor tax revenue was used for interim funding.

The tribal Tobacco and Liquor Enterprise employs ten full-time Indian individuals. This includes a manager, bookkeeper, management trainee, watchman and six full-time clerks. There are three part-time clerks as well as three temporary clerks. Clerks work six-hour shifts. Longer shifts could be implemented but the employment of more persons is desirable in light of a high overall tribal unemployment rate. Employment in tobacco and liquor sales provides a year-round income to families that often depend on seasonal fishing for the bulk of their income.

One of the total sixteen persons employed by the tribal Tobacco and Liquor Enterprise is non-Indian. One Indian

employee is a member of the Puyallup Tribe and the remaining 14 persons are Muckleshoot members. The overall Reservation unemployment rate is 55 percent with a 622-person potential labor force.[2] The 14 Muckleshoot members employed in the Tobacco and Liquor Enterprise represent 5 percent of the total 280 employed Muckleshoots.[2]

Two Enterprise employees were receiving State public assistance prior to being employed in tobacco and liquor sales. At one time CETA funds were used for attendance of a retail clerk training program but now the clerks receive in-house training. Frequently tribal members feel uneasy in a group of non-Indians and are reluctant to seek job training off the Reservation. The tribal Enterprise provides job training for tribal members among their peers. Job training also occurs on the management level. Currently there is one management trainee involved in the Tobacco and Liquor Enterprise.

PORT GAMBLE BAND OF KLALLAM INDIANS

The Port Gamble Klallam Tribe operates one tribal trading post which sells food, cigarettes and other items. Tobacco sales make up 75 percent of the total sales of the shop.

The Port Gamble Klallam tobacco ordinance adopted in January, 1973 regulates and taxes the sale and distribution of tobacco products on the Reservation. The ordinance limits tobacco sales outlets to the Tribe. The tobacco tax is equal to the net revenue resulting from tobacco sales.

The tobacco enterprise employs five persons, all Port Gamble Klallam members. Two of the five persons employed had been receiving state public assistance benefits prior to their employment in the tribal tobacco shop. According to BIA statistics there were 171 persons in the Port Gamble Klallam potential labor force in 1978.[2] Tobacco sales jobs accounted for 4.8 percent of the total 105 Port Gamble Klallams employed in 1978.[2] The Port Gamble Klallam unemployment rate was 38.8 percent in 1978.[2]

In 1977 tobacco gross sales amounted to $290,250. The net profit collected as tax revenue in 1977 was $51,000. Tribal administrative salaries and miscellaneous accounting services essential to all tribal programs utilized $20,200. A recreational program benefiting 100 community residents, non-Indians as well as Indians, spent $4,700 in tax revenue. A fisheries enhancement program received $700 in tax revenue. The remaining $25,400 was used to maintain cash flow for cost reimbursable federal programs administered by the Tribe. The Port Gamble Klallam tribal controller stated that the Tribe would be unable to operate without the working capital provided by tobacco sales.

In 1978 tobacco gross sales amounted to $261,442 and the Tribe realized tax revenue of $50,000 as the net profit of the tobacco sales. In 1978 administrative salaries benefitting all tribal programs utilized $18,700 in tax revenue. Law enforcement supplies and youth education programs in crime prevention received $1,300. Senior citizen dinners

and activities received $2,500 in tax revenue. The dinners were open to non-Indians as well as Indian persons. The remaining $27,500 was used to alleviate cash flow problems.

PUYALLUP TRIBE OF INDIANS

The Puyallup Tribe collects the largest sums of tobacco tax of any of the Tribes interviewed. This revenue supports some of the more extensive educational and governmental services.

The Tribe operates a tribal enterprise selling cigarettes, tobacco products, groceries, fish and crafts. This shop employs five to seven clerks in addition to a manager and part-time bookkeeper. These persons are all Puyallup Indians. All the clerks were receiving some type of State public assistance prior to employment by the Tribe.

Through a regulated licensing system, the Tribe authorizes individual tribal members to operate tobacco shops. There are at present 11 tribally authorized shops. One of these shops employs six workers, two of whom were receiving State public assistance before being employed at the shop. The shop's owner estimates that these six workers support 35 family members, including children, through their employment. Eight of the other shops employ five to seven individuals each, and are similar family-run businesses with the proceeds being distributed over a large population. The two remaining shops are larger in size and between them employ thirty persons.

Three Indian tobacco wholesalers also operate on the Reservation. Of the total 92-1/2 jobs created by the tobacco shops, it is estimated that at least one-half of the individuals employed were previously receiving some type of State public assistance. At most, 10 percent of the employed individuals are non-Indians.

According to the 1978 BIA Labor Force statistics, the total potential Puyallup labor force, 16 years of age and over, was 1,865 individuals and of this total,988 are employed.[2] The tribal unemployment rate is 47 percent.[2] After discounting 10 percent for the non-Indians employed by tobacco shops, the 83 Indian jobs represent 8.4 percent of the total Puyallups employed. These are persons directly employed as a result of tobacco sales and many more jobs are made possible by tax and license revenue funding of other tribal programs.

The Puyallup Business Code authorizes tribal police officers to insure compliance with the provisions of the code. In late 1977 and again in April, 1978 the Tribe closed down two unauthorized tobacco sellers until they came into compliance with the Puyallup Business Code.

By ordinance, the Puyallup Tribe imposes a tobacco tax of 5 percent of the licensed outlet's gross proceeds of cigarette and tobacco products. It is the duty of the licensee to collect the tax from the purchasers, keep tax records and make timely tax payments to the Tribe. The tribal shop is taxed at the same rate, but at times pays an additional 5 percent of the gross proceeds of cigarette and tobacco products

for administration of the tribal accounting records. In addition to the tax, a $500 annual license fee is collected by the Tribe for each licensed outlet.

In 1977 tobacco taxes and license fees collected for three months amounted to $154,000. These monies were spent for a variety of services and programs. Tax revenue of $39,000 was used for start-up costs for a tribal fish cannery which employs 30 Indians and Japanese workers. Tax revenue of $5,700 was spent supporting the tribal fish propagation program and $21,000 in tax revenue was appropriated for the tribal law enforcement program. This program supplements State and local law enforcement not adequately delivered to Reservation residents. This tribal program also includes fisheries enforcement.

Administrative salaries amounted to $9,500 supporting programs such as education, housing rehabilitation, senior citizen activities and health and child welfare programs. Tax revenue of $78,800 was not spent that year, but was used to alleviate cash flow problems resulting from the operation of cost reimbursable federal programs. A fisheries management program funded by the BIA which should have begun operation at the beginning of the federal fiscal year, October 1, would have been delayed until the following January if unencumbered tribal funds were not available to fund the program in the interim.

In 1978 tobacco taxes collected for the 12 months totalled $549,000. Administrative salaries supporting a variety of tribal programs appropriated $210,000 in tax and license revenue.

The tribal law enforcement program received $70,800. The fisheries program received $61,000. The tribal construction program was supplemented with $51,000 in tax revenue. Seriously needed administrative and clinic space was constructed employing 12 Puyallups.

Tax revenue of $48,000 provided partial funding for the Puyallup Tribal School District with its Indian cultural program. There are three schools in the District with 270 to 275 currently enrolled students in Head Start through the 12th grade. There is a 50-person waiting list for the high school and 60 persons are waiting for the pre-school program. Tax and license monies have also been used for interim funding where federal education money is late in arriving. The success of the tribal education program may be attributed in part to the program's orientation to tribal culture and heritage, an educational aspect lacking in State public schools.

Tribal members and employees may receive scholarship money to continue their education from the education funds. At present the tax revenue is providing the means for a tribal school principal to continue his education. Transportation for Puyallup Group Home residents was also provided under the tax and license fee money spent on the Puyallup education program.

Tribal Enterprises used $30,000 in tax and license revenue for economic development projects in 1978. Tax revenue

of $32,500 was used to supplement tribal legal expenses and $12,000 was used for support of the legal program.

All programs use equipment and frequently federal programs restrict equipment purchases. Copying, secretarial and audiovisual equipment and office furniture were purchased with $19,000 in tax and license revenue.

The Youth Conservation Project used $7,000 for the supervision of 30 youths. This federal program does not include money for the supervision required in management of a successful program. Some of the work done by the youths included rehabilitation and clean-up of local fish spawning streams. Tax revenue of $6,000 was used in a land study and $1,700 went toward utility bills for all tribal programs.

QUILEUTE INDIAN TRIBE

The regulation and taxing of tobacco sales on the Quileute Indian Reservation is included in the Quileute Business Licensing and Taxing Ordinance. This comprehensive ordinance imposes a Business and Occupation tax on all Reservation businesses. The ordinance has a schedule of licensing fees for the operation of businesses such as motels, trailer parks, charter boats, general stores, and tackle shops. In addition to license fees, taxes on the sale of gasoline, fish, tobacco and gross sales of any other businesses are imposed by the ordinance. Tax credits are given to encourage Indian employment.

The Tribe received $143,528.57 through B&O taxes in 1978. This made up over one-third of the total tribal budget.

The B&O taxes collected at $.50 per carton and 10 percent of the gross sales of other tobacco products from non-tribal tobacco sellers amounted to only $25.00 in 1978. Because these non-tribal tobacco sellers include the Washington State Tobacco Tax of $1.60 per carton in the retail price as well as the tribal tobacco tax, sales are minimal. Because of the double taxation, tobacco products are purchased almost exclusively at the tribal tobacco shop.

The Quileute Tribe operates one tobacco shop on the Reservation. The tax revenues generated from the tribal tobacco shop are retained in the enterprise for its operation. At the close of the year the net profits, if needed by Tribal Government, are transferred into the General Fund of the Tribe.

In 1977 the tribal tobacco outlet had a net profit of $1,064.15 on gross sales of approximately $57,000. This profit was transferred to the Tribe for use in salaries for accounting, secretarial work and tribal supervision.

In 1978 the tribal tobacco outlet had gross sales of $50,919.19 and a net loss of $1,[illegible]9.22. If profits had been shown in this period they would also have been transferred to the Tribe's General Fund. Transfers of net profits from the tribal tobacco outlet have been insignificnt in comparison to the tax revenue generated from other businesses on the Reservation paying B&O taxes.

In 1978 a non-Indian store made some incidental cigarette sales without paying the tribal tobacco tax. When informed

that they were liable for tribal taxes, they agreed to discontinue tobacco sales entirely.

Sale of tobacco products by the Tribe provides two jobs for Quileute members. No other items except tobacco products are sold at the shop. According to BIA Labor Force statistics, the Tribe had an unemployment rate of 74 percent in 1978 with a potential labor force of 193 persons.[2] The two tribal members employed in tobacco sales represent 4 percent of the total 50 tribal members employed. [2]

The total revenues generated by business license fees and taxes provide essential governmental services to the Indian and non-Indian community on the Reservation. Tribal services include police and fire protection (nearest State Police station is over 20 miles away), day care, Head Start, school lunches, senior citizen programs, adult education and water, sewer and garbage service.

QUINAULT INDIAN NATION

The Quinault Tobacco Control Act of 1978 establishes the Quinault Tobacco and Trading Company as the exclusive tobacco outlet on the Reservation. The Tobacco Control Act imposes a tax on the sale of cigarettes in the amount of $.50 per carton and can be set as high as $1.00 per carton. Other tobacco products are taxed at the rate of 10 percent of the retail price.

The revenue collected will be spent to provide for the health, education and welfare of the Reservation residents.

Priorities for spending are to strengthen tribal government, health, education and other social services, fire protection, roads, ambulance and rescue service, water and sewage services, land acquisition, development needs and environmental protection.

In addition to taxing, the Quinault ordinance prohibits sales to anyone under 18 years of age, provides for penalties including seizure and forfeiture for violations and outlines the general framework under which the tribal tobacco business shall operate.

The ordinance designates the Tribe as the only authorized Indian tobacco outlet on the Reservation. The Tribal Court has ordered one person to cease sales of tobacco products. This case is currently being appealed to the Tribal Court of Appeals. At present no sales of untaxed tobacco are being made by this individual. The only other unauthorized retail operator is scheduled for trial in early May, 1979.

The tribal tobacco enterprise has been operating since December, 1978. Since beginning operations through April, 1979, the total tobacco tax revenue collected by the Quinault Nation was $3,789.49. The tax is collected monthly on the basis of purchases made from the wholesaler. The tax is then passed on to the ultimate consumer by its addition to the retail price.

Because of the recent commencement of tobacco sales, no appropriations from the tax revenue have been made. Under the priority scheme outlined above, the tax revenue is to

be spent to provide health, education and welfare services. One service to be funded by tobacco tax revenue is the Reservation-based ambulance. The Reservation is located at least one hour each way from the closest hospital and a Reservation-based ambulance means persons can be transported to the hospital in one hour instead of the two hours required if an ambulance based close to the hospital is used. A second highly needed service is police protection. Most of the Reservation is not policed by the State against theft of forest products.

The tribal tobacco shop operates within the general store owned and operated by the Quinault Nation. The general store sells a variety of grocery items, fresh and canned fish and gasoline. Six persons are employed in the general store. One of these jobs is made possible by tobacco sales. The person employed is a Quinault Indian.

The Quinault Nation had an overall unemployment rate of 29.3 percent in 1978 with a potential labor force of 731 persons.[2] The one Quinault employed in the tobacco sales represents 0.1 percent of the 517 employed Quinaults.[2]

The Quinault Nation anticipates opening two additional outlets for tobacco products and groceries which will result in eight additional jobs for tribal members.

SHOALWATER BAY INDIAN TRIBE

The Shoalwater Bay Indian Tribe is located on a small reservation in southwest Washington with the smallest tribal

population of those tribes studied. The Tribe has had a tobacco ordinance in effect since April, 1975 and at present a new ordinance has been drafted but has not yet been adopted.

Under the present ordinance each licensed seller must submit to the Tribe an annual license fee of $25.00 and 1 percent of the gross income of the business as tax. In addition to the tribal license the new ordinance requires the seller to obtain a Federal Indian Trader's License. The tax rate under the new ordinance is more than double that under the present ordinance. The new tax rate is $.10 per carton.

The Shoalwater Bay Tribe has licensed two tribal members to operate tobacco outlets. These two shops sell items other than tobacco but tobacco sales amount to 95 percent of the business. Total sales in 1977 from these two shops totalled $528,119 with a tax paid of $5,281.19. Ninety-five (95) percent of these sales, or $501,713.05, and 95 percent of the tax, or $5,017.13, was the result of tobacco sales.

The tax is collected quarterly and one-half of the tax goes to the Tribal Education Foundation and one-half to the tribal general fund. The Education Foundation distributes tax funds to needy members in the form of scholarships. Five to seven persons are currently receiving benefits.

The tribal general fund purchases equipment and supplements areas where grants and contracts for tribal programs are insufficient. Areas where expenditures were made are the

Summer Youth Program, community health workers, tribal police force and cultural and language preservation. The tribal general fund is also used to support programs while awaiting reimbursement from the federal government.

In 1978 taxes of $4,711.03 were collected on sales of $471,103. Ninety-five (95) percent of these sales or $447,547.85 and 95 percent of the tax, $4,475.48, was realized by the sale of tobacco products. Again, one-half of the tax revenue was used by the tribal Education Foundation. The remaining one-half of the tax revenue was used for the same purposes as in 1977, and in addition $300 was spent for oyster seeds for the tribal aquaculture project and $300 was spent for fish feed, lumber and screens for the tribal fish hatchery. Tax revenue of $200 was used for funeral expenses .

In the two shops, six persons are employed. Two of these are non-Indians. BIA Labor Force statistics state that the tribal unemployment rate in 1978 was 55.1 percent.[2] The potential labor force was 27 individuals in that year and 19 of these were employed.[2] The four Shoalwater Bay Indians employed in tobacco shops represent 21 percent of the total 19 Shoalwater Indians employed. One of the persons persons employed in the shops was previously receiving State public assistance.

SKOKOMISH INDIAN TRIBE

The Skokomish Tribe operates a tribally owned tobacco enterprise selling tobacco products as well as locally made crafts. There are two licensed tobacco outlets on the Reservation owned and operated by Skokomish members. One of these outlets has just opened within the month of April. The other outlet has been in operation since 1977 in violation of the tribal ordinance limiting sales to a tribal enterprise. In 1978 the Tribe attempted to halt sales from this outlet in tribal court but the case was dismissed on a technicality. A second prosecution prompted a local referendum that resulted in an emergency interim ordinance permitting individual members to operate licensed tobacco outlets.

A tribal tobacco outlet license fee of $150 for a six-month period is now required in addition to a Federal Indian Trader's License. Under the emergency interim tobacco ordinance adopted in April, 1979, the tobacco tax imposed is $.325 per carton of cigarettes and 5 percent of the wholesale price of all other tobacco products. All tobacco tax revenues are deposited in the Tobacco Tax Fund to be used for enforcement and administration of the ordinance, educational, recreational and cultural activities, planning and administration of economic development of the Reservation community, land use planning, administration of land use controls, natural resource management and conservation, water, sewer, solid waste disposal, fire protection, police, administration

of justice, development and protection of archeological resources and tribal program administration services.

In 1977 the tribal tobacco shop had gross sales of $395,195.90 and of this amount, 95 percent, or $355,676, was attributable to tobacco sales. The ordinance in effect in 1977 allocated all the net profit from the enterprise as tax revenue to be deposited in the Tribal General Fund. The tribal tobacco shop's net profit of $94,123.80 accounted for 78 percent of the total amount expended from the general fund in 1977. These general funds were used for a variety of governmental services, including an expenditure of $46,010.12 to employ a tribal manager, a tribal controller, a program director, a maintenance person and to supplement salaries of a secretary and part-time bookkeeper.

These administrative positions manage all tribal programs including supervision of the CETA staff, a learning center serving 30-40 students in educational and cultural activities and an Indian language program serving 60-70 persons. Other programs administered include a tribal housing rehabilitation project in which six tribal employees will weatherize and rehabilitate 40 substandard homes on the Reservation, and programs for fisheries management, enhancement and enforcement. Two hatcheries are maintained by the Tribe on the Reservation.

Employment of the entire administrative staff with tribal funds is a goal of Skokomish tribal officials. This would permit employment of the best individual for a job whether or not that individual can meet the requirements set for

a federally funded tribal position. At present the Tribe has two job openings for accountants and qualified persons have applied, but no qualified person has been out of work for ten weeks, a CETA requirement for employment. In addition, the maximum CETA salary is only $833 per month and this precludes many qualified individuals from accepting these positions.

In addition to the administrative salaries, $18,664 in general funds were used to provide technical assistance to the Tribe in 1977. An expenditure of $12,105 was made to insure tribal buildings, vehicles, boats and equipment, and $7,191 was used for tribal land purchases. The general fund supplied $6,513 for telephone service and $5,715 for utilities. Building and grounds maintenance received $3,830. Funeral expenses accounted for $296 and $293 was used for the tribal recreation program. The remaining $19,384.60 was used for travel expenses, office equipment purchase and maintenance, office supplies and duplication. A total of $120,294.72 was spent from the tribal general fund that year.

In 1978 revenue from the tribal shop was considerably less than the previous year. This was the direct result of the opening of a tobacco shop by a tribal member in violation of the ordinance in effect at that time.

In 1978 the tribal shop had gross sales of $196,550.56 and 95 percent of this, or $186,722, was attributable to tobacco products. This resulted in net income or tax revenue of $16,454.46. Tribal tobacco shop income made up 17 percent

of the total $96,801.30 expended from the general fund in 1978. Administrative salaries accounted for $50,955 in 1978 general fund expenditures and $10,967 was used for insurance. An expenditure of $7,679 was made for telephone, $3,006 was used for utilities, $3,105 for duplication costs and $2,400 for technical assistance to the Tribe. The tribal recreation program utilized $523 and the remaining $18,166.30 was used for travel expenses, equipment purchase and maintenance, building and grounds maintenance and office supplies.

The tobacco tax revenue through its deposit in the general fund was used to maintain cash flow for all tribal programs. The goal of the Tribe is to become self-sufficient through economic development with all salaries paid through tribal income. Future uses of tax revenue include development of fire protection, ambulance service and improved law enforcement. At present these services are insufficiently provided by the county to the Reservation community.

The tribal tobacco outlet employs four tribal members and one Yakima Indian. The two individual licensed outlets employ five persons each. The 14 Skokomish Indians employed in the tobacco shops represent 10.7 percent of the total 130 members employed in 1978.[2] Reservation employment was 29 percent in 1978 with a potential labor force of 183, according to BIA Labor Force statistics.[2]

SQUAXIN ISLAND INDIAN TRIBE

The Squaxin Island Tribe has been selling tobacco products since 1977. The tobacco outlet is tribally owned and operated. No other tobacco outlets are authorized. In addition to tobacco, the tribal shop sells other items, including groceries, seafood and handicrafts. An estimated 90 percent of sales result from tobacco products. The Tribe has been operating according to an ordinance never officially adopted and is presently considering a new cigarette taxing ordinance. The tribal tax has been and will continue to be 4 percent of all gross receipts.

In 1977 the tribal shop had gross sales of $654,986.50, of which 90 percent, or $589,487.85, was realized from the sale of tobacco products. A 4 percent tribal tax imposed on all gross receipts resulted in tax revenue of $26,199.46 with $23,579.51, or 90 percent, attributable to the sale of tobacco products. In addition the tribal shop had a net profit of $70,607.36 for a total of $96,806.82 available to the Tribe in tax revenue and net profit.

In 1977 the $96,806.82 in revenue was used in four areas. First, $12,546.54 was used for administrative salaries and operating costs attributable to all tribal programs. Some of the programs provided by the Tribe were health, education, fisheries enhancement, law enforcement, housing and housing repairs, recreation, and senior citizens and

youth programs. Tax revenue of $15,630.81 was spent in a tribal land clearing program. A payment of $31,839.53 was made to obtain a Housing and Urban development housing site. Tax revenue of $36,789.94 was used to maintain cash flow by meeting payrolls and expenses for federal programs where monies had not yet been received.

In 1978 the tribal outlet had gross sales of $739,336 of which 90 percent, or $665,303.40, resulted from tobacco sales. The 4 percent tax on all gross receipts netted $29,569.04, of which 90 percent, or $26,612.13, is attributable to tobacco sales. In addition, the tribal shop realized a net profit of $86,334.60 in its operation in 1978. Total revenue of $115,903.64 was available to the Tribe in taxes and net profit from the shop.

In 1978 the total revenue of $115,903.64 was used in four areas. Administrative salaries supporing 11 persons and for operating costs serving all tribal programs accounted for $51,342.65. These programs were identical to those supported in 1977. Tax revenue of $48,852.04 was spent for indirect costs. This money may be recovered from the federal government under an indirect cost rate now being negotiated for government contracts. Light bills, heat, telephone and other supportive services are immediately necessary and unencumbered funds must be utilized for prompt payment. The Tribal Council made available $23,314.76 as loans to tribal fishermen. Of this amount, $9,986.74 was

repaid in 1978, leaving a balance outstanding of $13,328.02. Tribal fishermen ordinarily receive loans through the Bureau of Indian Affairs and the Indian Finance Act; however, these loans were not made available by the federal government in 1978. Tax revenue of $2,380.93 was used in 1978 by the Tribe to support cash flow for all tribal payrolls and programs.

At the tribal tobacco shop, seven persons are employed; six of these are Squaxin Island Indians. Two of the workers were receiving State public assistance before being employed in the shop. In addition, the tobacco tax and net profits fund positions for 11 tribal administrative persons, of which two are non-Indian. According to BIA Labor Force statistics, in 1978 the Squaxin Island Tribe had an overall unemployment rate of 37.6 percent and the potential labor force 16 years of age and over was 261.[2] The six Squaxin Island members employed by the tobacco shop represent 3.7 percent of the total 163 members employed.[2]

The Reservation attorney reports that fisheries enhancement and patrol, as well as law enforcement, especially policing trespassers on the uninhabited Squaxin Island, and patrol of tribal housing is insufficiently provided by the State. State social and health services, although available to members, are offered at inconvenient locations and transportation from a rural reservation to the point of service delivery is often impossible for many tribal members. The State is reluctant to provide services at

more convenient locations because the number of tribal members is too small to justify the expense of bringing services to them. Areas of difficulty include day care, Head Start, medical and dental services, counseling for alcohol and drug abuse prevention, adult education, juvenile and foster care and recreation.

The Tribe provides limited services that are frequently available through the State in more populated areas. Although severely limited by tribal resources, some of these services include employment counseling, training and career placement, parent effectiveness training, senior citizen lunches, legal services, temporary emergency housing, summer youth programs, health maintenance and education, nutrition information, fisheries patrol and enhancement. In addition, the Tribe serves as liaison to the Indian Health Service.

SUQUAMISH INDIAN TRIBE

The Suquamish Tribe, located on the Kitsap Peninsula, first adopted a tobacco ordinance in 1972. In 1977 the Tribe operated two tobacco shops while licensing two individually owned shops. Individual shops must be owned by tribal members and are required to obtain a Federal Indian Trader's License in addition to a tribal license. In 1978 the Tribe operated one tribal shop and licensed two individual shops. At present one tribal and one licensed individual shop are in operation.

Pursuant to the tribal tobacco ordinance one individual seller who refused to pay the tribal tax was closed down by the Tribe in 1972.

Presently the tribal tobacco excise tax is $.50 per carton and 8 percent of the wholesale price of other tobacco products. Under a prior ordinance the tribal tobacco tax was $.20 per carton. Prior to October, 1977, the tribal tobacco tax was considered to be the net profit from the enterprise. In addition to net profits the tribal shop is now taxed at $.50 per carton of cigarettes and 8 percent of wholesale price of other tobacco products as specified in the ordinance. Tobacco sales are prohibited to anyone under 18 years of age.

In 1977 sales from the two tribal shops totalled $265,947 and 90 percent of this amount, or $239,352, was realized by the sale of tobacco products. Net income or tax revenue in 1977 from the two tribal shops then in operation was $22,408. In 1977 the individual licenses sellers contributed $64,249 in tax revenue. This brought the total tax revenue collected by the Tribe to $86,657 for 1977.

In 1977 $22,408, or the net income from the tribal shops, was used for administrative salaries and operating costs for all tribal programs; these programs included fish enhancement, enforcement and management, tribal police, tribal court, cultural preservation, recreation, summer school and preschool. Dollars spent for operating costs

covered expenses such as health insurance, office supplies, office equipment and legal fees. Tax revenue of $14,992 was used to purchase land in the name of the Tribe and $15,552 was spent in construction of a new tribal tobacco shop. The remaining $33,705 was used for Housing and Urban Development matching funds and was utilized in supporting the tribal cash flow for all tribal programs.

In 1978 the one tribal shop in operation realized a net profit of $10,055.82 from gross sales of $545,123.90. The tribal shop transferred $8,420.48 of its net profits to the Tribe and retained the remainder for improvements. This store realizes 90 percent of its sales from tobacco products. An additional $62,515.75 in tobacco tax was paid the Tribe from the tribal tobacco enterprise. In 1978 the two individual licensed shops contributed $72,747 in tax revenue to the Tribe. Total tax revenue collected in 1978 was $143,683.23.

In 1978 the tax revenue was again utilized for administrative salaries in support of all tribal programs and for tribal operating costs not covered by governmental grants and contracts. Programs in 1978 included three community health workers whose transportation needs were met by tobacco tax revenue, a cultural program including a museum, old photo collection, archives and oral history tape collection, two fish hatcheries, and a tribal court. The tax revenue also supported the administrative overhead of a community

development director. Support of cash flow was even more important in 1978. Freda Scott, tribal accountant, stated, "Tribal operations would probably be reduced to a minimum if cigarette sales stopped."

In 1978 the three tobacco shops in operation employed 16 Indian people. One of the employees in the tribal shop was receiving State unemployment benefits prior to being employed in the shop. The overall tribal unemployment rate in 1978 was 56.1 percent, according to BIA statistics.[2] With a total potential labor force of 132, the tobacco shop's sixteen employees represent 27 percent of the total 58 Suquamish employed.[2]

SWINOMISH INDIAN TRIBE

The Swinomish Tribe licenses two individual tobacco outlets. Sales have been taking place since 1972. Any enrolled tribal member may apply for a tobacco outlet license with payment of a $100 yearly license fee and acquisition of a Federal Indian Trider's License. All tobacco products shall be purchased from the Tribe unless the licensed outlet becomes an agent of the Tribe. All tobacco products remain property of the Tribe until sold to the ultimate consumer. The Tribe prohibits sales to persons under 18 years of age.

In 1977 the tribal tobacco tax was $.10 per carton. In November, 1978, an amended ordinance was approved, raising the tax to 5.5 percent of gross sales of all tobacco products.

In 1977 the Tribe collected tobacco taxes from its licensed outlets in the amount of $48,000 on gross sales of $873,000. Administrative salaries of $19,000 were paid with tax revenue in 1977. One administrator, salaried with tax revenues, was responsible for all tribal programs and a Reservation employment counselor received on-half of his salary from this source. The employment counselor works with all unemployed tribal members seeking jobs and develops training programs to improve employment skills. Resume writing and interview techniques are taught and job placement services are performed. The Tribe has found that this Indian counselor meets the needs of unemployed Indians better than State agency counselors.

Also in 1977, $7,680 was utilized for fisheries enhancement. These funds purchased fish food, screens, nets, fish medication and other necessary supplies for hatchery production. In 1977 $4,800 was used to support the tribal recreation program serving 50 Indian and 50 non-Indian people. These funds made possible upkeep on the gym facilities, purchase of equipment and transportation to regional tournaments. The tribal law enforcement program used $13,920 for upkeep on patrol cars, purchase of gasoline, radio equipment, uniforms and insurance for the officers. The Tribe spent $2,600 for general administrative support. This included office supplies and utilities attributable to all tribal programs.

In November, 1978, an amended tobacco ordinance was adopted. This raised the tobacco tax rate to 5.5 percent

of the retail sales price. The new ordinance more than doubled the tribal tax rate and instituted a similar tax on other tobacco products. Tax revenue of $56,000 was collected in 1978 with its increased tax rate in effect for only two months. In 1978, gross sales for the two licensed tobacco shops was $1,018,000 in tobacco products.

In 1978, $22,000 in tax revenue was spent for administrative salaries, for a position overseeing all tribal programs and funding one half of the employment counselor's position. Tax revenue of $8,960 was spent in the tribal fish enhancement program and $5,600 was spent for a tribal recreation program serving Indians and non-Indians. Tax revenue of $16,240 was spent in the tribal law enforcement program and $3,200 was used in general administrative support for all tribal programs.

With the increased tribal taxes in effect for a full twelve months in 1979, tribal officials estimate the tobacco taxes collected will be $82,000 and will be used in the same areas.

Tribal administrator Terry Beniman states, "Without revenue from cigarette taxes, we could not accept many grants and contracts. Miscellaneous costs and costs not included in grants and contracts must be picked up by the cigarette tax revenue." An example is the EDA Local Public Works project that has funded construction of a community center for the Tribe. The grant funds will not pay for furniture,

kitchen appliances, telephones and office equipment. Purchase and installation of these items is very expensive.

The two tribally licenses tobacco shops employ five persons plus two owner-operators. Two of these seven persons are non-Indians. According to Bureau of Indian Affairs Labor Force Reports in 1978 the overall tribal unemployment rate was 48.1 percent with a total potential labor force of 270.[2] The five Swinomish employed in the tobacco shops represent 3.5 percent of the total 140 Swinomish employed.[2]

Swinomish Social Service Director, Ed Senner, reports that there are many areas in which the State insufficiently supplies services to the Reservation community. Due to the lack of communication between the Department of Social and Health Services and Reservation residents, only an estimated one-half of eligible Swinomish residents receive Food Stamps. No public transportation is available because the county-wide bus system does not offer service on the Reservation. No extension courses are available on the Reservation through the neighboring Skagit Valley College. There is a gross lack of State and county law enforcement services on the Reservation including State Patrol and County Sheriff, adult probation and enforcement of fishing regulations. Road maintenance by the county and State has been inadequate. The county health nurse serving the Reservation has been replaced by a nurse supplied by the Indian Health Service and the Women and Infant Care Program has been taken over by the Tribe to improve services.

The State does not provide any counselling services for alcoholics on the Reservation, nor do they have an Indian on the State staff to deal with Indian alcoholics. Lack of public transportation further hampers the Indian alcoholic in seeking State counselling services. The Swinomish Indian Tribal Community has one alcoholism counselor paid by the Indian Health Service to provide services under the Swinomish Alcoholism Prevention and Control Program.

FOOTNOTES

1. Coeur d'Alene, Kalispel, Lower Elwha, Muckleshoot, Port Gamble, Puyallup, Quileute, Quinault, Shoalwater Bay, Skokomish, Squaxin Island, Suquamish and Swinomish.

2. Bureau of Indian Affairs Labor Force Reports, 1977, 1978.

3. R. Barsch, article to appear in Washington Law Review, June, 1979, p.81.